

Appl. No. : 10/728,693
Filed : December 5, 2003

REMARKS

Claim 8 has been canceled. Claims 1-7, 9, 13 and 44-57 are pending. New claims 57-89 have been added. Claims 1-2, 4-9, 13, 44-56 were rejected under 35 U.S.C. § 103 as being obvious over Dickson. A terminal disclaimer is filed herewith to overcome the obviousness-type double patenting rejection.

Applicants respectfully contend that Dickson fails to show or suggest all of the limitations of the claimed invention. The present invention, as claimed in the pending claims (1-7, 9, 13 and 44-56) provides for a "color pre-selected to correspond to at least one specified physical property" of a fastener. There is simply no teaching in Dickson of pre-selecting a color to correspond to the physical property of a fastener. Dickson teaches plural indicator marks on the outer head of a fastener. The Examiner has stated that "at least one of the indicators can be in the form of a painted material," Office Action, pg. 3, and that "the painted material . . . will inherently have a color." However, the color of the painted material of Dickson is not pre-selected to denote a physical property, but rather is used as a preselected marking to denote a physical property. Dickson is distinguishable on this basis alone.

Furthermore, even if they were colored, the markings of Dickson are not ascertainable from the distances recited in the claims. Applicants respectfully bring to the Examiner's attention the exhibit shown to the Examiner in connection with prosecution of U.S. Patent No. 6,095,739—a side-by-side comparison of nails employing the uncolored markings of the Dickson method and the method of invention of the then-pending claims which is substantively identical to the present pending claims. As demonstrated in the interview, the markings of Dickson were not ascertainable from the distances recited in the pending claims. Applicants respectfully submit that even if colored, the Dickson markings would be equally unascertainable from the claimed distances.

Finally, Applications have added new claims 57-89, which recite that a "single pre-selected color correspond to at least two specified physical properties" of a fastener. As the Examiner stated in the rejection, "Dickson discloses the concept of providing a plurality of indicator marks on the outer head of a variety of different types of fasteners that indicate a variety of properties or dimensions of the fasteners." The invention of the newly added claims uses a single color to identify at least two physical properties, and therefore lacks the plurality of markings required by Dickson.

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Accordingly, Applicants respectfully submit that the pending and newly added claims are in condition for immediate allowance.

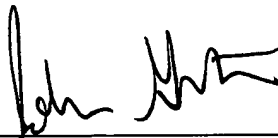
If any minor obstacles to allowability are noted which may be corrected by Examiner's amendment, the Examiner is respectfully invited to contact the undersigned by telephone.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6/9/04

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